

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELIJAH IBM BEY (EX. REL. ELIJAH PALMGREN), :

Plaintiff, :

-v- :

MALE OFFICER DALY BADGE #522, ET AL., :

Defendants. :

18-CV-9359 (VEC)

OPINION AND ORDER

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VALERIE CAPRONI, United States District Judge:

Pro se plaintiff Elijah Bey commenced this action on October 12, 2018. Dkt. 2. On October 31, 2018, this Court referred the action to Magistrate Judge Parker for general pretrial supervision and for the preparation of a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b) in response to any dispositive motion. On July 11, 2019, Judge Parker issued a R&R recommending that the case be dismissed under Federal Rule of Civil Procedure 41(b) for failure to prosecute. Dkt. 29. No party submitted objections to the R&R. For the following reasons, the R&R is ADOPTED in full. The action is DISMISSED for failure to prosecute.

BACKGROUND

Plaintiff’s claims arise out of an alleged argument with police officers on September 14, 2018. *See* R&R at 1. Plaintiff alleges that he was handcuffed and searched by the police after he began to video record the encounter using his phone. *Id.* Plaintiff claims he was released only after he agreed to delete the video. *Id.* Although Plaintiff suffered no physical injuries, he claims he suffered “judicial injury” and seeks monetary damages from Defendants. *Id.*

On February 21, 2019, Magistrate Judge Parker held a telephonic status conference with the parties and granted Defendants’ request for leave to file a motion to dismiss. Dkt. 18. On

April 1, 2019, the Defendants filed a motion to dismiss Plaintiff's complaint. Dkt. 19. On May 14, 2019, Judge Parker extended Plaintiff's time to oppose the motion to dismiss until June 13, 2019. Dkt. 27. Plaintiff failed to file an opposition motion by June 13, 2019 and failed to contact the Court to request another extension of time. *See* R&R at 2. On July 11, 2019, Judge Parker issued a R&R recommending that the case be dismissed for failure to prosecute. Dkt. 29.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where, as here, no timely objection has been made by either party, "a district court need only find that there is no clear error on the face of the record in order to accept the report and recommendation." *Phillips v. Reed Grp., Ltd.*, 955 F. Supp. 2d 201, 211 (S.D.N.Y. 2013) (internal quotation marks omitted); *see also Adams v. New York State Dep't of Educ.*, 855 F. Supp. 2d 205, 206 (S.D.N.Y. 2012) (a district court "may adopt those portions of the [magistrate's] report to which no 'specific, written objection' is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law." (quoting Fed. R. Civ. P. 72(b))). Failure to file timely objections to the magistrate's report constitutes a waiver of those objections both within the district court and on appeal. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

CONCLUSION

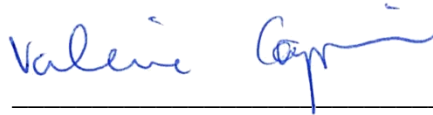
Careful review of the Report reveals that there is no facial error in its conclusions. The action is DISMISSED. The parties' failure to file written objections precludes appellate review of this decision. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008).

Accordingly, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and, therefore, permission to proceed *in forma pauperis* for purposes of appeal is denied.

The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff and to note mailing on the docket. The Clerk is also directed to close the open motion at Dkt. 19.

SO ORDERED:

Date: **October 17, 2019**
New York, New York



VALERIE CAPRONI
United States District Judge